IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 411 of 2003

Date of decision 15.5.2007

Dhan Bahadur **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge.
The Hon'ble Mr. Justice : Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the appellant: **Mr. Alok Ranjan, Advocate, vice Mr. Jagdish Vats, Advocate.**

For respondent : **Mr. Som Dutt Vasudeva, Addl. A.G.**

Surjit Singh, Judge (Oral)

. Appellant Dhan Bahadur has been convicted of offence under Section 20 (C) of the Narcotic Drugs & Psychotropic Substances Act, 1985 for allegedly possessing one kilogram and 200 grams of 'Charas'. He has been awarded sentence of ten years rigorous imprisonment and fine of rupees one lakh; in default of payment of fine to undergo rigorous imprisonment for a further period of two years.

2 We have heard the learned counsel for the appellant.

3. The only submission made by the learned counsel for the appellant is that the appellant was tried for the offence of possessing one

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[1] **Whether reporters of the local papers may be allowed to see the judgment?**

Kilogram 200 grams‘Charas’, but the Chemical Examiner’s report shows that the ‘Charas’ content in the stuff recovered from him was only 27.78 per cent, meaning thereby that the total quantity of ‘Charas’ recovered from him was 333.36 grams. The submission made by the learned counsel is factually correct as per record.

4. This Court in Criminal Appeal No. 491 of 2003 (Dharam Pal versus State of Himachal Pradesh), vide judgment dated 15.5.2007, in which the facts were similar to the facts of the present case, has held that where the stuff contains ‘Charas’, i.e. resin of cannabis plant, to certain extent per report of the Chemical Examiner and with respect to the rest of the stuff there is no report of the Chemical Examiner and the report further reads that the stuff contains resin to a certain extent and does not say that the whole of it is ‘Charas’, as in the present case, the quantity of ‘Charas’, recovered from an accused, has to be worked out based on the percentage of the resin (‘Charas’) in the recovered stuff.

5. Applying the ratio of the aforesaid judgment of this Court to the facts of the present case, we hold that the quantity of ‘Charas’ recovered from the appellant was only 333.36 grams or say lesser than the commercial quantity and, therefore, the sentence part of the judgment of the trial Court is liable to be modified. The sentence of the appellant, as imposed by the trial Court assumably under Section 20 (C) of the Narcotic Drugs & Psychotropic Substances Act, is set aside and in place thereof the appellant is sentenced under Section 20 (B) of the Narcotic Drugs & Psychotropic Substances Act. He is sentenced to undergo rigorous imprisonment for four years and to pay fine of rupees ten thousand; in

default of payment of fine to undergo rigorous imprisonment for a further period of three months.

6. We have been told that the appellant has been in custody since December, 2002. The Registry to verify the fact today itself and in case it is so, telegraphic direction be sent to the Superintendent, in-charge of the concerned jail, to release the appellant forthwith, in case his detention is not required in connection with any other case.

7. Appeal stands disposed of accordingly.

(Surjit Singh)
Judge

May 15, 2007 (BC)

(Sanjay Karol)
Judge